

Alexandra H. Moss (CA Bar No. 302641)
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109-7701
Tel: (415) 436-9333
Fax: (415) 436-9993
Email: alex@eff.org

Counsel for Amici Curiae

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

INTEL CORPORATION and APPLE INC.,

Plaintiffs,

v.

FORTRESS INVESTMENT GROUP LLC,
FORTRESS CREDIT CO. LLC, UNILOC 2017
LLC, UNILOC USA, INC., UNILOC
LUXEMBOURG S.A.R.L., VLSI
TECHNOLOGY LLC, INVT SPE LLC,
INVENTERGY GLOBAL, INC., DSS
TECHNOLOGY MANAGEMENT, INC., IXI
IP, LLC, and SEVEN NETWORKS, LLC,

Defendants.

No. 3:19-cv-7651-EMC

**NOTICE OF MOTION AND MOTION OF
THE R STREET INSTITUTE, THE
CENTER FOR DEMOCRACY &
TECHNOLOGY, PUBLIC KNOWLEDGE,
ENGINE ADVOCACY, AND THE
ELECTRONIC FRONTIER FOUNDATION
FOR LEAVE TO FILE A BRIEF AS *AMICI
CURIAE***

Hon. Edward M. Chen
Date: April 23, 2020
Time: 1:30 PM
Dept.: Courtroom 5

PLEASE TAKE NOTICE that, at 1:30 P.M. on April 23, 2020, the R Street Institute, the Center for Democracy & Technology, Public Knowledge, Engine Advocacy, and the Electronic Frontier Foundation will move for leave to file a brief as *amici curiae* relating to the Defendants' Motion to Dismiss and to Strike Plaintiffs' Complaint (Doc. No. 111). Plaintiffs consent to this motion; Defendants do not consent.

The proposed brief is attached hereto as an exhibit to the motion. The movants waive oral argument on this motion, and request that the Court grant leave to file the brief on the papers before or during the April 23, 2010 hearing on Defendants' motion to dismiss.

Although this Court does not have specific rules governing leave to file briefs as *amici curiae*, decisions on analogous appellate motions are instructive. Per the Ninth Circuit, the "classic role

1 of amicus curiae” is “assisting in a case of general public interest, . . . supplementing the efforts
 2 of counsel, and drawing the court’s attention to law that might otherwise escape consideration.”
 3 *Funbus Sys., Inc. v. Cal. Pub. Utils. Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986) (citing *Miller-Wohl*
 4 *Co. v. Comm’r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982)); *see also Neonatology Assocs.,*
 5 *PA v. Commissioner*, 293 F.3d 128, 131 (3d Cir. 2002) (Alito, J.) (leave to file should be granted
 6 where proposed brief has “(a) an adequate interest, (b) desirability, and (c) relevance”).

7 The movants are well-equipped to serve this role. As described in detail in the Interest of
 8 Amici section of the tendered brief, they are nonprofit organizations that study the impact of
 9 intellectual property law and competition law on consumers and the public at large. Based on
 10 the movants’ interest in and expertise about the public consequences of intellectual property and
 11 competition law, the tendered brief provides relevant explanation on the nature of patent claims,
 12 corrects a subtle but fundamental misunderstanding of patent and competition law in Defendants’
 13 arguments, and identifies economic incentive challenges with the patent system at large. This
 14 information, without being duplicative of the arguments in the parties’ briefs, provides context
 15 on the broader workings of the patent system and thus draws the Court’s attention to relevant
 16 law that might otherwise escape consideration.

17 For the foregoing reasons, the tendered brief will be of assistance to the Court, and the motion
 18 for leave to file as *amici curiae* should be granted.

19
 20 Respectfully submitted,

21 Dated: March 19, 2020

22 /s/ Alexandra H. Moss
 23 Alexandra H. Moss (CA Bar No. 302641)
 24 ELECTRONIC FRONTIER FOUNDATION
 25 815 Eddy Street
 26 San Francisco, CA 94109-7701
 27 Tel: (415) 436-9333
 28 Fax: (415) 436-9993
 Email: alex@eff.org
Counsel for Amici Curiae